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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

JUDY RITCHIE,

Plaintiff and Appellant,

v.

PETER FORD, as Trustee, etc.,

Defendant and Respondent.

B215106

(Los Angeles County
Super. Ct. No. SS016953)

APPEAL from an order of the Superior Court of Los Angeles County, Terry Friedman, Judge. Reversed.

Law Offices of Bennett Kerns and Bennett Kerns for Plaintiff and Appellant.

Edward M. Burgh for Defendant and Respondent.

I. INTRODUCTION

Plaintiff Judy Ritchie, appeals from an order denying her petition to compel arbitration of claims against Peter Ford, as trustee of the Glen Ford Living Trust Established April 8, 1994 (“the trust”)¹ pursuant to Code of Civil Procedure section 1281.2.² Plaintiff was Glen’s personal assistant until his death on August 20, 2006. Plaintiff argues the trial court erred in refusing to compel arbitration of her claims against the trust on the ground she failed to comply with the one-year limitation period related to claims against a decedent’s estate or trust. (§§ 366.2-366.3.) We reverse the order denying the petition to compel arbitration because the statute of limitations issue must be decided by the arbitrator.

II. BACKGROUND

Plaintiff filed her petition to compel arbitration on June 30, 2008. The petition alleged that she had been employed as Glen’s personal assistant for a number of years. As of July 1, 2002, she and Glen signed an agreement confirming the employment relationship. Paragraph 2 of the employment agreement provided for a term of employment until June 30, 2005, and thereafter from year to year. Paragraph 3 of the employment agreement provided that, upon Glen’s death, plaintiff was to receive six month’s additional compensation at the rate of \$4,000 per month for a total of \$24,000. Paragraph 6 of the employment agreement obligated Glen to pay one-half of plaintiff’s health insurance premiums in a sum not to exceed \$250 per month. Paragraph 11 of the employment agreement contained the following arbitration clause: “Any and all disputes

¹ We refer to decedent and the trustee by their first names only because they have the same surname. No disrespect is intended.

² All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

as to the interpretation of or any performance under this Agreement shall be determined by arbitration in Los Angeles, California in accordance with the rules of the American Arbitration Association (with full discovery available), subject to the terms and provisions hereof and the final award in any such arbitration proceeding shall be subject to entry as a judgment by any court in such state provided same does not conflict with the terms and provisions hereof. The party prevailing to the greater extent in any such arbitration proceeding (and in any other arbitration proceedings and/or any litigation in any way related to this agreement) shall be entitled to recover any and all reasonable attorney's fees and other costs reasonably incurred in connection therewith."

The June 30, 2008 petition to compel arbitration alleged that Glen was the settlor of the 1994 trust. Glen died on August 30, 2006. No proceeding was initiated to probate Glen's estate. On information and belief, it was alleged Glen's non-trust estate is inadequate to satisfy the obligations owed to plaintiff from the employment agreement. Plaintiff made a claim for compensation to Peter, as trustee of the trust. Peter denied the compensation request. On April 15, 2008, plaintiff submitted an arbitration demand to the American Arbitration Association and to Peter. Peter rejected plaintiff's arbitration demand on May 2, 2008.

Peter demurred to the petition on the ground that the action was barred by the one-year statute of limitations in either section 366.2 or section 366.3. Peter argued that the trial court lacked jurisdiction because plaintiff did not comply with one-year statute of limitations or any tolling provision. Peter acknowledged that plaintiff filed a petition for a determination pursuant to Probate Code section 21320 that filing an arbitration claim was not a contest of any trust provision. Peter acknowledged the filing of the Probate Code section 21320 petition would have extended the statutory period for commencing the present proceeding. However, Peter asserted that plaintiff had failed to file the petition to compel arbitration within the extended limitation period. In opposition, plaintiff argued the demurrer raised factual issues which must be resolved by the arbitrator. According to plaintiff: the only proper issue before the trial court was whether Peter had refused to participate in the arbitration process; Peter was not entitled

to have the issue of whether she had commenced the arbitration within a specific time period of time resolved by demurrer; and no grounds existed under section 1281.2 to refuse to order the parties to arbitrate. Plaintiff also argued the merits of the statute of limitations issue. On December 16, 2008, the trial court continued the matter for supplemental briefing on the merits of the statute of limitations issue. The parties then filed additional briefs on the merits of the statute of limitations issue.

On February 5, 2009, the trial court denied the petition to compel arbitration. The unsigned minute order states that the applicable statute of limitations is section 366.3. The trial court ruled that the 1-year period was tolled for 217 days by plaintiff's Probate Code section 21320 safe harbor petition. The petition to compel arbitration which the trial court interpreted as "the action" was not filed until June 30, 2008. Thus, the petition to compel arbitration was not filed until 453 days after Glen's death, which was beyond the 1-year period. The trial court rejected plaintiff's claim that the submission of the claim for arbitration satisfied the requirement of initiating an action. This was because the submission of a claim did not initiate the court's process. The trial court also rejected plaintiff's contention that the time for filing a notice of appeal from the order finding the arbitration claim was not a contest that could be considered in calculating the tolling period. This timely appeal followed.

III. DISCUSSION

A. Standard of Review

Section 1281 provides, "A written agreement to submit to arbitration an existing controversy or a controversy thereafter arising is valid, enforceable and irrevocable, save upon such grounds as exist for the revocation of any contract." The trial court has authority to compel arbitration pursuant to section 1281.2 which provides in part: "On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party thereto refuses to arbitrate such

controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines that: [¶] (a) The right to compel arbitration has been waived by the petitioner; or [¶] (b) Grounds exist for the revocation of the agreement” Section 1281.2 further provides in part: “If the court determines that a written agreement to arbitrate a controversy exists, an order to arbitrate such controversy may not be refused on the ground that the petitioner’s contentions lack substantive merit.” (See *California Correctional Peace Officers Assn. v. State* (2006) 142 Cal.App.4th 198, 205; *United Public Employees v. City and County of San Francisco* (1997) 53 Cal.App.4th 1021, 1025; *Office & Professional Employees Union v. Sea-Land Service, Inc.* (1979) 90 Cal.App.3d 844, 847.)

Doubts as to whether an arbitration clause applies to a particular dispute should be resolved in favor of sending the parties to arbitration. (*Cronus Investment, Inc. v. Concierge Services* (2005) 35 Cal.4th 376, 386; *Vianna v. Doctors’ Management Co.* (1994) 27 Cal.App.4th 1186, 1189; *United Transportation Union, AFL/CIO v. Southern California Rapid Transit Dist.* (1992) 7 Cal.App.4th 804, 808.) However, the right to compel arbitration depends upon the existence of a valid contract between the parties. (*County of Contra Costa v. Kaiser Foundation Health Plan, Inc.* (1996) 47 Cal.App.4th 237, 245; *Marsch v. Williams* (1994) 23 Cal.App.4th 250, 253; *Boys Club of San Fernando Valley v. Fidelity & Deposit Co.* (1992) 6 Cal.App.4th 1266, 1271; *Blatt v. Farley* (1990) 226 Cal.App.3d 621, 625.) The question of whether a valid agreement to arbitrate exists is determined by reference to state law applicable to contracts generally. (*Doctor’s Associates, Inc. v. Casarotto* (1996) 517 U.S. 681, 686-687; *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 971-973; *Kinney v. United Healthcare Services, Inc.* (1999) 70 Cal.App.4th 1322, 1328.) California has a strong public policy in favor of arbitration. (*Moncharsh v. Heily & Blasé* (1992) 3 Cal.4th 1, 9; *Toal v. Tardif* (2009) 178 Cal.App.4th 1208, 1219-1220.) But there is no public policy favoring arbitration of disputes which parties have not agreed to arbitrate. (*Freeman v. State Farm Mut. Auto Ins. Co.* (1975) 14 Cal.3d 473, 481; *Cione v. Foresters Equity*

Services, Inc. (1997) 58 Cal.App.4th 625, 634; *Engineers & Architects Assn. v. Community Development Dept.* (1994) 30 Cal.App.4th 644, 653.) Before a party may be compelled to arbitrate a claim, the petitioning party has the burden of proving the existence of a valid arbitration agreement and the dispute is covered by the agreement. (*Engalla v. Permanente Medical Group, Inc.*, *supra*, 15 Cal.4th at p. 972; *Rosenthal v. Great Western Financial Securities Corp.* (1996) 14 Cal.4th 394, 413-414.) If the moving party meets its burden, the litigant opposing arbitration has to prove by a preponderance of the evidence any defense to the petition. (*Engalla v. Permanente Medical Group, Inc.*, *supra*, 15 Cal.4th at p. 972; *Rosenthal v. Great Western Financial Securities Corp.*, *supra*, 14 Cal.4th at p. 413.) We review the order denying the petition to compel arbitration de novo. (*Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 799; *Valentine Capital Asset Management, Inc. v. Agahi* (2009) 174 Cal.App.4th 606, 613; *Warfield v. Summerville Senior Living, Inc.* (2007) 158 Cal.App.4th 443, 446-447; *Hartnell Community College Dist. v. Superior Court* (2004) 124 Cal.App.4th 1443, 1448-1449.)

B. The Right to Compel Arbitration

The issue here is whether the trial court properly refused to compel arbitration on the ground that Plaintiff failed to file the present petition within one-year of Glen's death on August 30, 2006 pursuant to either section 366.2 or section 366.3. This is a statute of limitations issue. The issue of whether plaintiff's claims are barred by the statute of limitations is an issue for the arbitrator, not the trial court. (*Wagner Const. Co. v. Pacific Mechanical Corp.* (2007) 41 Cal.4th 19, 25-26; Knight, Cal. Practice Guide: Alternative Dispute Resolution (The Rutter Group 2009) ¶ 5:111.7, p. 5-82 (rev. #1, 2008).) The trial court erroneously refused to compel arbitration by finding plaintiff failed to comply with the one-year time limit in section 366.3. This issue must be decided by the arbitrator and not the court.

Defendant asserts that since the arbitration clause refers to the interpretation or performance of the agreement, the trial court was empowered to decide the statute of limitations issue. In *Wagner*, our Supreme Court described the arbitration clause thusly: “The parties’ written agreement provided that, ‘[s]hould any dispute arise out of this Subcontract, or its performance, either party may demand arbitration.’ The arbitration clause prescribed a method for selecting arbitrators and declared that their decision ‘shall be binding and conclusive. . . .’ The clause did not, however, set a time limit for demanding arbitration.” (*Wagner Construction Co. v. Pacific Mechanical Corp.*, *supra*, 41 Cal.4th at p. 24.) As can be noted, the language of the arbitration clause in *Wagner* closely resembles that in the present case.

Moreover, as explained in *Wagner*, the relevant issue is the merits of the dispute, not the timeliness of the commencement of judicial proceedings: “The only California decision squarely addressing the question holds that a court may not deny a petition to compel arbitration on the ground that the statute of limitations has run on the claims the parties have agreed to arbitrate. In *Meyer v. Carnow* (1986) 185 Cal.App.3d 169, the Court of Appeal reversed a superior court’s order denying a patient’s petition to compel a physician to arbitrate malpractice claims under the terms of an agreement for medical treatment. Rejecting the physician’s argument the petition had to be denied because the statute of limitations on the malpractice claims had expired, the court explained that ‘reliance upon the statute of limitations applicable to medical malpractice lawsuits is misplaced. [The patient] is not seeking to invoke the jurisdiction of a judicial forum to litigate the merits of a malpractice claim but rather seeks from the superior court an order that [the physician] abide by a contract he signed.’ (*Id.*, at p. 174.)” (*Wagner Construction Co. v. Pacific Mechanical Corp.*, *supra*, 41 Cal.4th at pp. 26-27.)

Finally, the arbitration clause requires submission of “any and all” disputes concerning interpretation and any performance under the employment agreement be arbitrated. Such language is broad. (*Johnson v. Greenelsh* (2009) 47 Cal.4th 598, 601, fn. 3; *California Faculty Assn. v. Superior Court* (1998) 63 Cal.App.4th 935, 945.) The statute of limitations issue relates to plaintiff’s performance and the timeliness of her suit.

Given the broad “any and all” language and the statutory preference for arbitration, the statute of limitations issue must be resolved by the arbitrator. (*Wagner Construction Co. v. Pacific Mechanical Corp.*, *supra*, 41 Cal.4th at pp. 25-26; *EFund Capital Fund Partners v. Pless* (2007) 150 Cal.App.4th 1311, 1322-1323; *Coast Plaza Doctors Hospital v. Blue Cross of California* (2000) 83 Cal.App.4th 677, 684-687; *Meyer v. Carnow*, *supra*, 185 Cal.App.3d at p. 174.) Thus, the order under review must be reversed.

IV. DISPOSITION

The order denying the petition to compel arbitration is reversed. Plaintiff, Judy Ritchie, is awarded her costs on appeal from defendant, Peter Ford, in his capacity as trustee of the Glen Ford Living Trust Established April 8, 1994.

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TURNER, P. J.

We concur:

ARMSTRONG, J.

MOSK, J.